

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND CO. and
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants.

Case No. 09-cv-0686 (ERW)

**MOTION TO SET BRIEFING SCHEDULE ON MONSANTO'S
EMERGENCY MOTION TO STRIKE AND TO AMEND
FOURTH AMENDED CASE MANAGEMENT ORDER PATENT**

Defendants/Counterclaim Plaintiffs E.I. du Pont de Nemours and Co. and Pioneer Hi-Bred International, Inc. (collectively, "Defendants") hereby request that the Court establish the following briefing schedule on Monsanto's "Emergency Motion to Strike (1) Prior Art and Related Invalidity Contentions First Disclosed in Expert Reports and (2) Cumulative Expert Reports and Testimony" ("Monsanto's Motion") (Dkt. 963):

Defendants' Response

Thursday, December 22, 2011

Monsanto's Reply

Thursday, December 29, 2011

This proposed schedule will result in Monsanto's Motion being fully briefed eight (8) days sooner than it otherwise would under the Court's local rules, and will allow the Court to conduct a hearing on these issues after the first of the year. This request is being made due to the upcoming holidays, and also because Defendants believe it is imperative that they be given adequate time to prepare a written response addressing the complex issues and serious relief

sought by Monsanto's Motion. Moreover, the schedule proposed by Defendants will allow the Court to decide Monsanto's Motion based on a fully developed record.

Because Monsanto seeks relief on an emergency and expedited basis due to the fact that Monsanto's rebuttal expert reports are due on January 16, 2012, Defendants also propose that the deadline for the parties' rebuttal experts, set forth in Paragraph 3 of the Court's Fourth Amended Case Management Order – Patent (Dkt. 935), be extended from January 16, 2012 to January 23, 2012. Defendants are not requesting any change to the February 13, 2012 deadline for them to submit reply reports on issues of secondary considerations, meaning that Defendants will have one less week to submit to such reports than under the current CMO.¹ Defendants are willing to shorten their time on the secondary considerations reply reports because they believe that the shortened time is adequate if such reports are necessary.

Defendants have not met and conferred with Monsanto on these issues given the “emergency” nature of Monsanto's Motion and the desire to put this proposal in front of the Court. Defendants, however, are willing to discuss these scheduling issues with Monsanto and/or the Court this afternoon.

¹ The deadline for submitting reply reports on issues of secondary considerations applies only to Defendants.

Dated: December 16, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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